IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Bail Appl..No. 5779 of 2007()

CRMP.3254/2007 of DISTRICT COURT, PALAKKAD
CRIME NO.237/07 OF TOWN NORTH POLICE STATION, PALAKKAD.

.....

: APPLICANT/ACCUSED NO.1

P.N.ABDUL SALEEM, S/O.P.K.HAMZA,
POOZHIKUNNAM HOUSE, GREEN FIELD COLONY,
PIRAVIRI, PALAKKAD.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
REPRESENTING THE S.I. OF TOWN NORTH POLICE STATION
PALAKKAD.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5779 of 2007

Dated this the 25th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. He faces allegations for offences punishable inter alia under Sections 408 and 381 I.P.C. The petitioner was allegedly an employee of the de facto complainant in a metal shop run by him. It is the case of the de facto complainant that absolute trust was reposed by him on the petitioner. He was permitted to manage the activities of the metal shop. It is alleged that the petitioner was found removing certain articles from the shop unauthorisedly. Thereafter the de facto complainant wanted to keep a close watch on the activities of the petitioner. The de facto complainant was satisfied that the petitioner was fraudulently removing articles from the shop and misappropriating amounts. A complaint was lodged long later before the police. In the complaint, there were allegations raised against accused 2 to 7, the relatives of the petitioner. They have already been granted anticipatory bail by the learned Sessions Judge. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that false and fraudulent allegations are being raised against the petitioner. The petitioner has started another business. The petitioner was not prepared to continue his employment with the de facto complainant on the meager salary that was being paid to him. These

circumstances had infuriated the de facto complainant and it is only because of such difference of opinion that the de facto complainant has now raised fanciful allegations of theft and misappropriation. The learned counsel for the petitioner relies on the circumstance that the petitioner had filed an earlier application for anticipatory bail and by order dated 6/9/2007 it was reported that no crime has been registered. It is thereafter that on 7/9/2007, the present crime has been registered. This reveals mala fides on the part of the de facto complainant and the police. The fact that Accused 2 to 7 has been light heartedly arrayed as accused must also convey to the court, the attitude of the police, submits the learned counsel for the petitioner. In these circumstances, it is prayed that anticipatory bail may be granted to the petitioner.

3. The learned Public Prosecutor opposes the application. There are absolutely no circumstances justifying or warranting the invocation of the discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor. The fact that the de facto complainant had taken some days to lodge a formal complaint before the police cannot be blown out of the proportion to come to the conclusion that the allegations raised are false. The petitioner obviously knew that the de facto complainant had started suspecting him. In these circumstances, if he filed a petition for anticipatory bail before the de facto complainant lodged a complaint and the police reported in the

anticipatory bail application that no crime has been registered, nothing crucial or sinister can be inferred from that circumstances alone, submits the learned Public Prosecutor. In the facts and circumstances of this case, interrogation of the petitioner is absolutely necessary to bring out the truth for a proper, efficient and expeditious investigation. The interests of a proper, efficient and expeditious investigation will be hampered if the petitioner were permitted to arm himself with an order of anticipatory bail at this stage, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I am persuaded to agree with the learned Public Prosecutor. I find merit in the opposition raised by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007